

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2013-0020

Sponsored by: <b>County Executive FitzGerald/Fiscal Officer</b>	<b>An Ordinance</b> enacting Chapter 712 of the Cuyahoga County Code to establish the Cuyahoga County Lodging Excise Tax Code of Regulations, effective 10/1/2013; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Council deems it necessary to adopt the regulations governing the County's Excise Tax on Lodging of Transient Guests; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to continue the usual and daily operations of the County.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** That Chapter 712 of the Cuyahoga County Code is hereby enacted as follows:

### **CHAPTER 712: Cuyahoga County Lodging Excise Tax Code of Regulations**

#### **Section 712.01: Title**

The Code of Regulations established pursuant to Resolution No. 3327 dated September 12, 2000 is hereby amended by this Chapter. This Chapter shall be known and may be cited and referred to as the "Cuyahoga County Lodging Excise Tax Code of Regulations".

#### **Section 712.02: Incorporations**

Resolution No. 930524 dated February 2, 1993, Resolution No. 975206 dated December 23, 1997, Resolution No. 041710 dated May 4, 2004, Resolution No. 105085 dated November 18, 2010, and Resolution No. 105086 dated November 18, 2010 are incorporated as if fully rewritten herein.

#### **Section 712.03: Definitions**

As used in the following Sections of the Cuyahoga County Lodging Excise Tax Code of Regulations:

- A. “Fiscal Officer” means the Cuyahoga County Fiscal Officer and any of his/her assistants designated to assist in administering and enforcing the collection of the excise tax on lodging of transient guests herein levied and imposed, who are hereby assigned all of the duties and authority of Cuyahoga County to administer and enforce the collection of such tax.
- B. “Consumer” means the person who the sale is provided to pursuant to as defined in ORC 5739.01(D)(1).
- C. “Hotel” means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, whether such rooms are in one or several structures. For purposes of this tax, Cuyahoga County resolved, effective July 1, 2004 (Resolution No. 41710), that the definition of “hotel” shall include establishments with fewer than five (5) rooms for the accommodation of guests. For purposes of this Code, “hotel” does not include any college or university owned housing that is primarily used to house students affiliated with the school during the school year.
- D. “Lodging” means one (1) or two (2) or more connecting rooms in which sleeping accommodations are provided for a transient guest(s).
- E. “Person” includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.
- F. “Premises” includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, used in conjunction with the business engaged by such person.
- G. “Rack Rate” means the rate for a hotel room before any discount is taken into account. The rack rate is posted on the wall or door of the hotel room itself as the maximum actual rate the hotel may charge for a room as required by ORC 3731.16.
- H. “Sale” and “selling” include all of the following transactions for consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever, including, but not limited to all transactions by which lodging by a hotel is or is to be furnished to transient guests.

- I. “Rent” means the aggregate value in money or anything paid or delivered, or promised to be paid or delivered for hotel lodging, without any deduction for the cost of labor, service, property used, interest discount paid after the price is paid or agreed to be paid, or any other expense.
- J. “Tax” means, except where otherwise specified, the tax levied and imposed herein.
- K. “Transaction” means the amount paid, or to be paid, by or on behalf of, a transient guest to a hotel; or where no such consideration is paid by or on behalf of, such transient guest, the maximum actual rate for such lodging posted pursuant to ORC 3731.16.
- L. “Transient guest(s)” means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- M. “Vendor” means a person who owns or operates a hotel that furnishes lodging to guests and includes the agents and employees of such person who performs the functions on behalf of the vendor. “Vendor” also includes the owner, lessee, mortgagor in possession of the real estate upon whose premises the vendor operates or has operated a hotel, when the vendor is or becomes a non-resident of Ohio or conceals his/her whereabouts or property. The vendor shall have an Ohio Retail Sales Tax Vendor License in order to operate a business pursuant to ORC 5739.17.
- M. “Provisions of Accommodations” means an act or process of providing a service or amenity to a guest, which is directly related to the lodging space.

**Section 712.04: Levy of Tax; When Collectable; Exemptions; Presumption; Taxable Transactions**

- A. An excise tax is hereby levied and imposed upon each transaction in Cuyahoga County by which lodging is or is to be furnished by a vendor to a transient guest or guests at a hotel, at the rate of five and one-half percent (5 ½%) of the sale for each such sale and/or transaction.
- B. The tax applies and is collectable when the lodging is furnished, regardless of the time when the rent is paid or delivered or whether the sale is done at no charge.

- C. For the purpose of the proper administration, and to prevent evasion of the tax, it is presumed that all rents and sales for hotel rooms in the County are subject to the tax until the contrary is established.
- D. This tax is not a part of the rent and shall be separately stated as such on every rent invoice, bill, statement or other written charge therefore.
- E. The tax does not apply to transactions for lodging furnished to representatives of the United States government which are paid directly by the Federal government; the government of any state, excluding Ohio, or any of their political subdivisions. Such transactions will be considered for an exemption by filing a Cuyahoga County Certificate of Exemption together with the bill, statement, or invoice and copies of payment received. For every transaction which the vendor claims is exempt pursuant to this section, the vendor must be able to produce sufficient documentation of the exempt status, and for Federal Government exemptions, the portion of the government credit card number, as identified by the Federal Government and Ohio Department of Taxation as authorizing the exemption, used for each individual transaction. The vendor is required to retain such records in the same manner as other lodging tax records. A Cuyahoga County Hotel/Motel Tax Exemption Report must be submitted with each Monthly Return in order for the exemption to be considered.
- F. The tax does not apply to transactions for lodging furnished to representatives of the Office of Foreign Missions, U.S. Department of State. Such transactions will be considered for an exemption by filing a Cuyahoga County Certificate of Exemption together with the bill, statement, or invoice and copies of any checks or credit cards received in payment by a mission. For every transaction which the vendor claims is exempt pursuant to this section, the vendor must be able to produce sufficient documentation of the exempt status, and for Foreign Mission exemptions, the front and back of the Mission tax exemption card, as identified by the Office of Foreign Missions, U.S. Department of State as authorizing the exemption, used for each individual transaction. The vendor is required to retain such records in the same manner as other lodging tax records. A Cuyahoga County Hotel/Motel Tax Exemption Report must be submitted with each Monthly Return in order for the exemption to be considered.
- G. The tax does not apply to optional services which may include: room service; porter or bellboy service, valet services, pay-for-view movies; wake-up calls and charges for telephone services, or other miscellaneous charges not related to the provision of accommodation and which are stated separately from the charge for lodging.

- H. The tax does apply to Vendor charges for: additional bed(s), bedding, housekeeping, use of refrigerator/microwave, pet accommodations, safes or other similar services which are charged in addition to the room charge and are amenities to the room which relate to the provision of accommodations.
- I. The tax does apply to the room portion of any “package rate.” Any vendor offering a package rate must separately identify on the guest receipt and/or other records of the vendor, at the time of furnishing of lodging, the room portion of the package rate, the transient occupancy tax applicable to the room portion of the package rate and the non-room portion of the package rate. The vendor shall bear the burden of proving that the allocation of taxes between the room portion and the non-room portion of the package rate was properly made and that the correct amount of taxes were collected and remitted to the appropriate agencies.
- J. The tax does apply to a receivable room charge, including non-refundable deposits or guaranteed no show revenue/fees paid by or on behalf of any person, whether or not the person actually exercises the right to occupancy by using or possessing any room or rooms, or portion thereof, whether it be termed “cancellation fee” or “attrition” or other term with similar meaning.

#### **Section 712.05: Liabilities of Vendor and Consumer**

- A. To the extent the vendor fails to collect the tax or elects not to collect the tax from the consumer upon each taxable transaction and/or sale, or having collected the tax, fails to return and remit the same when due, the tax is hereby imposed and levied upon the vendor.
- B. Within thirty (30) days after commencing business or changing business name, management company or ownership, each operator of any hotel or motel renting lodging to transient guests shall complete a registration form (the form is available at the Fiscal Office) for said hotel or motel with the Fiscal Officer by means of purchasing an Ohio Retail Sales Tax Vendor License and obtaining from the Fiscal Officer a Transient Occupancy Registration Certificate to be at all times posted in a conspicuous place on the premises.

#### **Section 712.06: Returns; Due Date; Remission of Penalties; Procedure Thereon; Failure to File; Form**

- A. Each vendor shall, on or before the 21<sup>st</sup> day of each month, complete and file a full return with the Fiscal Officer for the preceding calendar month on the form prescribed, showing all the information required

thereon, including the amount of tax due the County from the Vendor and report all exempt transactions on the Hotel/Motel Tax Exemption Report. Failure to file these items will result in penalties.

- B. The monthly returns shall be submitted to the Fiscal Officer with payment of the amount of tax due thereon. Any and all taxes collected and not refunded to the consumer shall be remitted to the Fiscal Officer.
- C. Upon receiving the monthly returns with the proper payment, the Fiscal Officer shall promptly stamp or otherwise mark on all copies the date received and the amount of payment received.
- D. Upon application of the vendor, in writing and for good cause shown, the Fiscal Officer may extend the time for making and filing returns. Also, the Fiscal Officer may reduce or abate any and all interest and penalties that may be due hereunder.
- E. Any vendor who fails to file a complete return and exemption report, with payment, postmarked on or before the 21<sup>st</sup> day of each month, shall forfeit and pay into the County Treasurer interest at the rate at which interest accrues per annum as prescribed pursuant to ORC 5703.47 and a penalty of ten percent (10%) of the amount of the tax due.
- F. The form of the return shall be prescribed by the Fiscal Officer. Submission of any form other than what is prescribed by the Fiscal Officer may result in the automatic rejection of exempted status for the transaction. The exemption certificate is to be completed in its entirety. If a fully completed and executed certificate is not obtained by the property and made available for audit, the excise tax shall apply and the property will be held responsible for the payment of same.

#### **Section 712.07: Amended Returns**

Amended Returns: Whenever the amount of any tax, interest and penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this Code, it may be refunded if the vendor makes a legitimate claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded. The claim shall be on forms furnished by the Fiscal Officer and a refund of any claim shall be at the sole discretion of the Fiscal Officer. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereof within four (4) years of the date of the claimed erroneous payment. This section is not a substitute for a petition for reassessment or any appeal following assessment.

### **Section 712.08: Assessments; Liabilities of Vendor and Consumer**

- A. If any vendor collects the tax and fails to remit the same to the County as provided herein, said vendor shall be personally liable for any amount collected, which was not remitted. If any vendor fails to collect the tax on any transaction subject thereto, such vendor shall be personally liable for the same. The Fiscal Officer may make an assessment against the vendor as the facts may require in the Fiscal Officer's sole discretion.
- B. No assessment against a vendor shall discharge the consumer's liability to the vendor for any unpaid tax, if the consumer owes the tax.
- C. No assessment issued against either the vendor or the consumer shall be considered an election of remedies or a bar to an assessment against the other for the tax, penalty, and interest applicable to the same transaction, provided, however, no assessment shall be issued against any person for the tax due on a particular transaction if the entire tax has been paid by another.

### **Section 712.09: Maintenance and Inspection of Records; Assessments; Delinquencies**

- A. The burden of proof rests upon each vendor to show what part, if any, of the gross room revenue receipts are not taxable from the hotel room sales and/or transactions; and for such purpose each vendor shall maintain and keep complete and accurate records of said room revenue together with a record of the tax collected thereon, which shall include:
  - 1. Primary records such as all guest or rent registers, sales, rent invoices, statements or bills, rent payments and/or refunds thereon; room rate sheets or cards of daily prices for each room, as required by ORC 3731.16; receipts of taxes collected; copies of appropriate schedules of Federal Income Tax Returns, Ohio Sales Tax Returns, and tax returns to local municipalities having a lodging excise tax identical or substantially similar to the tax imposed hereby; exemption certificates, tax payment receipts; cash register tapes and all other pertinent documents; and
  - 2. Secondary records such as bank deposit receipts and daily books, journals, or any other records in which the vendor accumulates data, which must be supported by complete detail in which such data was accumulated.

- B. Guest or rent invoices, statements or bills, and cash register tapes for taxable sale must state separately the total taxable sale and the tax charged and/or collected. The records must also show clearly the length of stay, in terms of consecutive days for each guest.
- C. All records relating to the collection and payment of the tax must be preserved by the vendor for five (5) years unless the Fiscal Officer requests that they be kept for a longer period.
- D. All such records and documents shall be open to the County Fiscal Officer for inspection during regular business hours. The Fiscal Officer shall from time to time, review, investigate, examine and audit any and all such records to determine if the proper tax has been returned and remitted. The Fiscal Officer also has the authority to remove such records as long as proper inventory of the documentation to be removed is provided to the vendor.
  - 1. The Fiscal Officer may interview the vendor or his/her employees and agents, and may take written statements under oath.
  - 2. If the Fiscal Officer's investigation of such records reveals that any tax or additional tax should properly have been returned and remitted by the Vendor, the Fiscal Officer shall make an assessment of such tax or additional tax.
- E. If any vendor fails to maintain complete primary sales records, accurately reflecting the total sales subject to the tax and of the tax due thereon, or which may be utilized in verifying the accuracy of the figures reflected in the vendor's secondary record and/or reported on the vendor's tax returns filed hereunder, the Fiscal Officer may use one of the following methods for such verification:
  - 1. Determine the total value of all rents, less rental refunds, when the full tax has also been refunded either in cash or by credit.
  - 2. Determine taxable and non-taxable sales, or the ratio of taxable sales to total sales, or both.
- F. The Fiscal Officer shall determine the proper amount of tax and/or make an assessment by any of the means set forth herein if any vendor:
  - 1. Fails to maintain complete records, as required hereby; or
  - 2. Fails or refuses to permit the Fiscal Officer to inspect any records;  
or



3. Refuses to permit the Fiscal Officer to sample or test check his business activity; or
  4. Having filed a return or returns, misrepresents or fails to disclose, any material fact or figure thereon; or
  5. Fails to collect the tax, or having collected the tax, fails to remit the same when due; or
  6. Fails to remit the correct amount of tax or interest thereon when due; or
  7. Fails to file a full and complete return when due
- G. No delinquent tax shall be assessed against a vendor more than four years after the return date for the period in which the taxable transaction occurred or after the return for such period was filed, whichever is later.

**Section 712.10: Procedure Following Assessment**

- A. Each assessment shall be in writing stating clearly the reasons and basis therefor.
- B. In each case of an assessment, the Fiscal Officer shall give to the assessee written notice thereof to be served by any reliable means of delivery, along with a copy of the delinquent tax assessment.
- C. The assessment shall become final thirty (30) days after service thereof upon the assessee, unless, the assessee, within thirty (30) days of service of notice of assessment, files with the Fiscal Officer a Petition for Reassessment providing written objection to the assessment, together with reasons for such objection and documentation therefore. Filing of a Petition for Reassessment shall stay enforcement by the Fiscal Officer. The Fiscal Officer shall consider the Petition for Reassessment and provide a determination to the assessee as to the result of such consideration, along with a final assessment.
- D. Thirty (30) days after notice of assessment, or upon notice of the determination the Petition for Reassessment by the Fiscal Officer, whichever is later, the assessment shall become final and the amount thereof shall be deemed a debt due and payable to the County. The Fiscal Officer shall cause to be filed a judgment lien in the amount of

the assessment, including penalties and interest added thereto under the provisions hereof.

- E. An appeal from the determination of a Petition for Reassessment may be made pursuant to the provisions of the Ohio Revised Code.
- F. All monies collected upon assessments including penalties and interest thereon shall, when received by the County, be considered as revenue arising from the tax.

#### **Section 712.11: Liability of Officers and Agents**

- A. If any person required to file returns and to remit the tax, fails for any reason to make such filing or payment, vendor's officers, partners or managing agents, or employees having control or supervision of, or charged with the responsibility of, filing returns and making payments of tax, shall be personally liable for such failure. The dissolution of such entity shall not discharge its liability for a failure to file returns or remit tax due prior to such dissolution.
- B. No vendor shall fail to file returns and remit the full and exact tax as required by this Code.
- C. Any person(s) or entity(s) owing such a debt to the County under the provisions of this Code which debt has become delinquent, shall be liable to any action brought in the name of the County of Cuyahoga, for the recovery of such amount.

#### **Section 712.12: Sale of Entire Business**

If a vendor, liable for the tax sells the business or quits the business, the taxes, interest, and penalties imposed hereby on taxable rents and/or transactions made prior to that time shall become due and payable immediately, and such person shall make a Final Return on the form specified by the Fiscal Office, within fifteen (15) days after the date of selling or quitting business. The successor to the business shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the former owner produces a receipt from the Fiscal Officer showing that the taxes, interest, and penalties have been paid, or a certificate (available upon request) indicating that no taxes are due. If the purchaser of the business fails to withhold purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the former owner. Regardless of whether there was purchase money, the successor shall be personally liable for the tax, interest and penalties accrued and unpaid during the operation of the business by the former owner.

### **Section 712.13: Intent**

It is the intent of these rules and regulations to provide for the administration of imposing, collecting and distributing the levy of an excise tax of five and one-half percent (5 ½%) on transactions and/or rent by which lodging by a hotel is or is to be furnished to transient guests as referred to and authorized by ORC 5739.09. Accordingly, these rules and regulations shall be construed to effectuate that purpose so as to be consistent with any requirement of law, compliance which is a prerequisite to the validity of the tax intended to be levied hereby.

### **Section 712.14: Severability**

If any sentence, clause, section or part of these rules and regulations, or any tax imposed as specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutional, illegality or invalidity shall affect only such clause, sentence, section or part and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of these rules and regulations. It is hereby declared to be the intention of Cuyahoga County that these rules and regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

### **Section 712.15: Capability of Vendor's Equipment; Vendor's Responsibility for Full Amount of Tax Levied**

Notwithstanding any provision contained in this Code to the contrary, each vendor is hereby permitted to collect the tax from transient guests at the rate of five and one-half percent (5 ½%) of taxable rents; provided however, that the Cuyahoga County Hotel Lodging Excise Tax shall be stated on each rent invoice, bill statement, or other written change therefor, separately and apart from the Ohio sales tax and any similar tax imposed by a local sub-division; and provided further, that each vendor shall report monthly the total taxable rents collected during each month and pay the tax equal five and one-half percent (5 ½%) of such total taxable rents.

### **Section 712.16: Settlement of Tax Fund**

- A. All receipts collected from the excise tax levied hereby shall be deposited in the Undivided Hotel Lodging Tax Fund.
- B. 27.27% of total receipts collected from the excise tax shall be appropriated to Cuyahoga County for the purpose of contributing revenues for the acquisition, construction, equipping and financing of an educational and cultural facility”.

- C. After the Cuyahoga County Fiscal Officer deducts the real and actual costs of administering the tax, the County will deposit 25% of the remainder to the credit of the general fund to reimburse itself for moneys paid for the medical mart/convention center. After the general fund distribution, each municipal corporation or township that does not levy an excise tax on such transaction, shall receive a uniform percentage of the tax collected in the municipal corporation or in the unincorporated portion of the township for each such transaction not to exceed thirty-three and one-third percent.
- D. The balance remaining in the Hotel Lodging Tax Fund shall be forthwith paid as required by law to The Convention and Visitors Bureau of Greater Cleveland, Inc./Positively Cleveland.
- E. A claim for refund for taxes illegally or erroneously collected or paid, certified by the Fiscal Officer and for which a warrant is drawn on the County Treasurer, shall be paid from the Undivided Hotel Lodging Tax Fund.

**Section 712.17: Responsibilities of Convention Bureau and County**

- A. The amounts allocated herein and hereby to The Convention and Visitors Bureau of Greater Cleveland, Inc. /Positively Cleveland are so appropriated thereto on condition that the said corporation recognizes that the County's hotel and motel industry which bears responsibility hereunder for the collection of the tax hereby levied, extends beyond the borders of the City of Cleveland and its downtown area, and, therefore, undertakes to promote the purposes and premises of the Code throughout the entire County so that the hotel and motel industry of the County generally may share as equitably as possible in the benefits to be derived from the promotion of such purposes and premises.
- B. The Convention and Visitors Bureau of Greater Cleveland, Inc. /Positively Cleveland shall present quarterly financial and performance reports as well as an annual operations report each showing its use of the funds hereby appropriated.

**Section 712.18: Recognition of Local Governments Who Have Additional 3% Bed Tax**

The County recognizes that the Cities of Cleveland, Beachwood, Bedford Heights, Broadview Heights, Brooklyn, Brook Park, Euclid, Fairview Park, Independence, Maple Heights, Mayfield Heights, Middleburg Heights, North Olmsted, Rocky River, Solon, Strongsville, Warrensville Heights, and

Westlake; and the Villages of Mayfield, Oakwood, and Orange are presently levying a hotel lodging excise tax.

**SECTION 2.** It is necessary that this Ordinance become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 3.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

\_\_\_\_\_  
County Council President

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

First Reading/Referred to Committee: August 13, 2013

Committee(s) Assigned: Finance & Budgeting

Journal \_\_\_\_\_  
\_\_\_\_\_, 20\_\_